

ENTERED

October 01, 2024

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NRS OCEAN LOGISTICS LTD

§

VS

§

CIVIL ACTION NO. H 23-2802

CIRRUSHARBOR, INC.

§

§

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court in the above referenced proceeding is Plaintiff's Motion for Partial Summary Judgment (Doc. No. 16), Magistrate Judge Bennett's Memorandum and Recommendation (Doc. No. 35). Neither party filed objections and the time for doing so has passed.

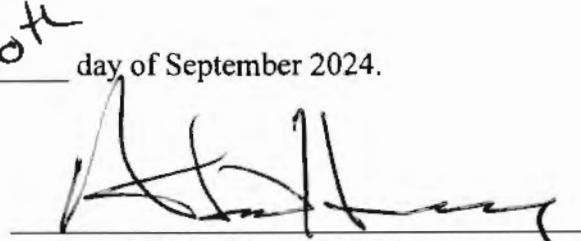
The Court has carefully reviewed, the filings, the applicable law, the Magistrate Judge's Memorandum and Recommendation, and agrees with the Magistrate Judge's conclusions. The Court notes, however, that the Memorandum and Recommendation states that under Rule 7.4 of the Local Rules for the Southern District of Texas that the Motion for Summary Judgment is technically unopposed. This Court's Local Rules state that "[f]ailure to respond to a motion will be taken as a representation of no opposition." S.D. Tex. L.R. 7.4; *see also* Hanen L.R. 7(D). As stated in the Memorandum and Recommendation, Plaintiff failed to respond to Defendant's motion by the July 22, 2024, deadline. Therefore, the local rules would allow the Court to grant Defendant's motion as it should be considered unopposed.

Nevertheless, the Fifth Circuit has explained that "although we have endorsed the adoption of local rules that require parties to file responses to opposed motions, we have not approved the automatic grant, upon failure to comply with such rules, of motions that are dispositive of the litigation. *See Johnson v. Pettiford*, 442 F.3d 917, 918 (5th Cir. 2006) (citing *Johnson v. Louisiana*,

757 F.2d 698, 707-09 (5th Cir. 1985); *Ramsey v. Signal Delivery Serv.*, 621 F.2d 1210, 1213-114 (5th Cir. 1980). In other words, where a party does not respond to a motion to dismiss, such failure does not permit the Court to enter a “default” dismissal. Taking into account the Fifth Circuit’s prohibition, this Court notes that the Memorandum and Recommendation analyzed the merits of the motion as has this Court, consequently, the Magistrate Court and this Court have complied with the dictates of the Circuit. Accordingly, it is hereby

ORDERED that; the Memorandum and Recommendation (Doc. No. 35) is **ADOPTED** and Plaintiff’s Motion for Partial Summary Judgment (Doc. No. 16) is **GRANTED**. All other pending motions are **DENIED**.

SIGNED at Houston, Texas, this 30th day of September 2024.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE